

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MOTOROLA, INC.)	File Nos. 0002438737-39, 0002438741-42,
)	0002438744, 0002438746, 0002438749,
Applications for Consent to Partition and)	0002438759
Disaggregate Licenses and Requests for Waiver of)	
Part 80 Rules to Permit Use of Maritime)	
Frequencies for Private Land Mobile Radio)	
Communications)	

ORDER ON RECONSIDERATION

Adopted: October 18, 2007

Released: October 19, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In a January 19, 2007, *Order*,¹ the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau) granted waiver requests filed in conjunction with the above-captioned licenses to partition and disaggregate VHF Public Coast (VPC) spectrum from MariTEL² to Motorola, Inc. (Motorola). On March 2, 2007, AMTS Consortium LLC, Telesaurus VPC LLC, Telesaurus Holding GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation (collectively Petitioners) requested partial reconsideration of the *Order*.³ In the alternative, Petitioners request that their petition be treated as an informal request under Section 1.41 of the Commission's Rules.⁴ For the reasons set forth below, we dismiss the petition.

2. *Background.* On January 20, 2006, MariTEL filed the above-captioned applications for consent to partition and disaggregate portions of sixteen VPC geographic licenses to Motorola. Accompanying the applications were requests for waivers to permit Motorola to provide this spectrum to third parties to satisfy public safety and other first responder requirements, and to be licensed under and governed by Part 90 of the Commission's Rules. The Bureau published notice of the filing of the assignment applications on January 25, 2006.⁵ No petitions to deny were filed.

¹ Motorola, Inc., *Order*, 22 FCC Rcd 579 (WTB MD 2007) (*Order*). The *Order* also addressed waiver requests associated with applications from other licensees to assign VPC spectrum to MariTEL, but those applications are not at issue in the present matter.

² The applications were filed by the following entities, which are referred to collectively as MariTEL: MariTEL Mid-Atlantic, Inc., MariTEL Southern Atlantic, Inc., MariTEL Northern Atlantic, Inc., MariTEL Southern Pacific, Inc., MariTEL Northern Pacific, Inc., MariTEL Great Lakes, Inc., MariTEL Mississippi River, Inc., MariTEL Alaska, Inc., and MariTEL, Inc.

³ Petition for Partial Reconsideration And in the Alternative, Section 1.41 Request (filed Mar. 2, 2007) (Petition).

⁴ See 47 C.F.R. § 1.41.

⁵ *Public Notice*, Report No. 2377 (WTB rel. Jan. 25, 2006).

3. On January 19, 2007, the Division substantially granted the waiver requests.⁶ The *Order* also indicated that the Division would consent to the assignment applications.⁷ The Bureau published notice of its consent to the MariTEL assignment applications on January 31, 2007.⁸

4. On March 2, 2007, Petitioners requested partial reconsideration of the *Order*, or, in the alternative, relief pursuant to Section 1.41.⁹ In essence, Petitioners ask that MariTEL be required to disgorge the proceeds of the sale.¹⁰ They argue that such an action would avoid a “windfall” to MariTEL, given that MariTEL represented to the Commission that it intended to use the VPC spectrum only to provide service to maritime vessels and requested additional time to construct its maritime network, then assigned the inland portions of its VPC geographic licenses to Motorola for land mobile use.¹¹ They also argue that such an action would be an appropriate sanction for various improprieties by MariTEL and its principals.¹²

5. *Discussion.* We conclude that the petition is procedurally defective. Pursuant to Section 1.106(f) of the Commission’s Rules, petitions for reconsideration of the *Order* were due February 20, 2007,¹³ but Petitioners did not file until March 2, 2007. The petition is therefore untimely.¹⁴

6. Even if the petition for partial reconsideration were timely, it would be defective. Petitioners did not file a petition to deny the assignment applications, or otherwise participate earlier in this proceeding. Section 1.106(b)(1) of the Rules provides, “If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person’s interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.”¹⁵ We agree with MariTEL that Petitioners have not

⁶ See *Order*, 22 FCC Rcd at 583-85 ¶¶ 7-13.

⁷ *Id.* at 585-86 ¶ 14.

⁸ *Public Notice*, Report No. 2900 (WTB rel. Jan. 31, 2007).

⁹ Petitioners filed an “Erratum Copy” of the Petition on March 5, 2007. Motorola and MariTEL filed oppositions on March 15, 2007. Petitioners filed a reply on March 27, 2007.

¹⁰ See Petition at 8.

¹¹ See *id.* at 6-8 (citing Very High Frequency (VHF) Public Coast Spectrum in the 156-162 MHz Bands, *Memorandum Opinion and Order*, 14 FCC Rcd 8218 (WTB PSPWD 1999)).

¹² See *id.* at 8.

¹³ See 47 C.F.R. § 1.106(f) (petitions for reconsideration are due thirty days after the Commission action).

¹⁴ That the Petition was filed within thirty days of the public notice announcing the consent to the assignment applications does not render it timely, because the *Order* is the action for which reconsideration was sought. See *Mobile Telephone, Inc.*, *Memorandum Opinion and Order*, 91 F.C.C. 2d 907, 908 ¶ 4 (1982) (March 26 petition for reconsideration of February 23 order granting application was properly dismissed as untimely even though public notice of grant was published March 4) (citing *Microwave Communications, Inc. v. FCC*, 515 F.2d 385, 395-97 (D.C. Cir. 1974)); see *id.* at n.4 (“[T]he issuance of a construction permit was a ministerial act carried out in accordance with the action taken in the First MO&O. Announcement of the grant in the Bureau’s Public Notice document in this case was a courtesy or convenience and not legal public notice under Section 405 of the Act [47 U.S.C. § 405].”); see also *Public Communications, Inc.*, *Memorandum Opinion and Order*, 54 F.C.C. 2d 390, 393 ¶ 9 (1975) (thirty-day period for filing petition for reconsideration commenced on date of Bureau letter, not date of subsequent public notice announcing Bureau action) (citing *Storer Broadcasting Co. (WJBK-TV)*, *Memorandum Opinion and Order*, 41 F.C.C. 2d 792 (1973)).

¹⁵ 47 C.F.R. § 1.106(b)(1).

demonstrated why it was not possible for them to participate in the earlier stages of the proceeding.¹⁶ The facts and allegations that Petitioners contend justify the requested relief generally predate the public notice announcing that the assignment applications were accepted for filing.¹⁷ Therefore, we conclude that the petition must be dismissed.¹⁸

7. Finally, Petitioners request that their petition be treated as an informal request under Section 1.41 of the Commission's Rules, in the event that it does not meet the procedural requirements for a petition for reconsideration.¹⁹ As Petitioners previously were informed, however, "a party cannot evade the procedural requirements of Section 1.106 by concurrently requesting the same relief under Section 1.41."²⁰

8. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Partial Reconsideration And in the Alternative, Section 1.41 Request filed by AMTS Consortium LLC, Telesaurus VPC LLC, Telesaurus Holding GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation on March 5, 2007, IS DISMISSED.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁶ See MariTEL Opposition at 5-7. Given this conclusion, we need not address MariTEL's argument that Petitioners also lack standing. See *id.* at 7-9.

¹⁷ For example, Petitioners refer to a 1999 decision regarding MariTEL's application for VPC geographic licenses, and MariTEL's 2003 request to extend the construction period for those licenses. While Petitioners state that the Petition "contains new facts, some that did not exist, and others that could not have reasonably been known by Petitioners, at the time a petition to deny could have been filed," they do not identify these facts. See Petition at 1.

¹⁸ See, e.g., AT&T Corp., *Order on Reconsideration*, 20 FCC Rcd 8578, 8579-80 ¶¶ 5-6 (2005); Sagir, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 8159, 8161-62 ¶¶ 3-4 (2001).

¹⁹ See Petition at 1 n.1.

²⁰ Paging Systems, Inc., *Order*, 21 FCC Rcd 7225, 7227 ¶ 8 (WTB PSCID 2006) (citing Jason Bennett, *Letter*, 20 FCC Rcd 17193, 17194 & n.14 (MB AD 2005); Adelphia Business Solutions Long Haul, L.P., *Order*, 15 FCC Rcd 18329, 18331-32 ¶ 3 (WTB PSPWD 2000)), *review pending*.